

## **Common Interest Communities Work Group**

### **Summary**

September 20, 2007

10:00 AM

General Assembly Building, House Room D

#### **Present:**

Senator Mary Margaret Whipple (Chair)

Delegate Terrie Suit

Delegate John Cosgrove

Jay DeBoer

Chip Dicks

Dale Goodman

Ron Kirby

Tom Perry

Cynthia Schrier

Pia Trigiani

#### **I. Welcome and Call to Order, Senator Whipple**

#### **II. Delegate Suit on Association Disclosure Packets (HB 2016, 2007)**

1. HB 2016 was the result of compromised legislation between Virginia Association of Realtors and Virginia Association of Community Managers. It was drafted by Jack Rust.
2. A buyer must be given a resale package from the seller, so that the buyer can understand the rules of the association where they are purchasing the property.
3. The state had set the price that can be charged for a packet at \$100.
4. Community Managers Association and Realtors Association decided that the actual cost of the packets was greater than \$100. The bill in discussion, co-patoned by Delegate Suit and Senator Devolites Davis raised maximum fee to \$325, but, it has to be the true cost of the packet, and it has to be a negotiated cost, among many other caveats.
5. There was debate on the implementation of the fee and asked for feedback from Association of Realtors.

##### **A. Ron Kirby-Virginia Association of Community Managers**

1. There have been implementation problems.
2. They are meeting with the Virginia Association of Realtors to discuss issues.
3. Many issues have nothing to do with resale disclosure packets.
4. One issue is that this would be a transaction based cost. Associations should get this money up front.
5. There will be different views; they have not had one complaint from a seller, or buyer or association. Complaints only have come from Realtors.
6. The meeting will be held at the end of this month.

##### **B. Chip Dicks-Virginia Association of Realtors**

1. There are some implementation problems.
2. Change in the law was supposed to take the realtor out of the equation.
3. Seller's were supposed to get the packet to the buyer through the association, pay the fee up front in order to get the package.

4. Most seller agents want to get the package in advance. Most associations won't let them have the packet unless there is a live contract and the packets are only good for 30 days.
  5. Realtor is forced to be in the transaction and the association company is not following the law as it was passed.
  6. There is no regulatory board for associations. This has created a body that has the ability to impose fees on citizens that are taxed without any regulation and there is nowhere for the consumer to go.
  7. Maybe there is a regulatory scheme that can help this situation.
  8. This could also help the realtors find an outlet to deal with licensing issues.
  9. Also prevents lawsuits over junk fees, instead have a board that takes up issues.
  10. Both the Virginia Association of Community Managers and Virginia Association of Realtors met last year and came up with a good solution, but associations are not following through and realtors are still involved.
  11. There are implementation problems, but beyond that there are structural problems.
  12. Most likely going to recommend a licensing scheme for association managers.
- C. Summarized Comments on Disclosure Packets
1. **Mr. Kirby**, VA Association of Community Managers-*Management companies don't establish move in fees, associations do. Some of the problems are with who is really making the fees. There appears to be a lack of understanding between what management companies do and associations do.*
  2. **Mr. Dicks**, VA Association of Realtors-*Often the management company implements what the association has imposed in way of fees. Responsibility of the management company to prevent violations of law.*
  3. **Ms. Trigiani**-*Associations cannot charge transfer fees unless they have that authority in their governing documents. One exception with condominiums is a reasonable user fee.*
  4. **Mr. Dicks**-*Association attorneys have said they believe they have the general authority to impose fees. Public policy question is when you look at something that in many ways looks like a local government, can they charge transfer fees? Associations are charging fees that won't apply to the current members. Is that proper? Association attorneys seem to be confused.*
  5. **Ms. Trigiani** -*Special assessment authority in documents is usually tied to capital improvements. There is special assessment authority in Community Association Act, but it is so narrowly construed that it is hard to do. There are many sets of documents and they are all different. Must look at specific documents to determine the associations authority. Developers are creating authority in the governing documents at the outset.*
  6. **Del. Suit**-*In her experience, there was a community association vote to charge a fee to new owners. Charges new owner for move-in fees, closing fees, and a 2-3 month capitalization charge and if you move out you must also pay a move-out fee, even if the space was fully furnished and there is no actual moving. Can this be done if the association voted to change its governing documents?*
  7. **Ms. Trigiani** -*Capitalization fees are permitted if the bylaws are amended to permit them, which would require a super majority vote. A set up charge is what management companies charge. Move-out fee is understandable when you are using an elevator etc.*
  8. **Del. Suit**-*Can fees be charged if there is no imposition on the association during the move out?*
  9. **Ms. Trigiani** -*It depends on the governing documents.*

10. **Ms. Schrier**-*They have heard complaints that associations are charging new fees without negotiations. When are the fees for the packets supposed to be paid? When can the association charge the fee?*
11. **Del. Suit**-*The intent was to treat it as an assessment that is paid at closing. This has not been made clear. Many associations are requiring online payments, which is not practicable for many people.*
12. **Mr. Kirby**-*In some cases the law allows some associations that are not managed by professionally managed companies to charge a fee up front, which might be the confusion. The fee for the packet only applies to professionally managed associations.*
13. **Ms. Schrier**-*Some communities are concerned about paying at settlement. What happens if the transaction doesn't go to settlement?*
14. **Del. Suit**-*When the actual transaction goes to closing there is a conversation with the association to determine what fees are due before closing. If the transaction doesn't go to closing it is an assessment against the unit and should go against the seller. There were good intentions with this bill and because there is no regulatory body people have to come to the Commission and General Assembly. Concern is that we are not going to be able to get regulation in place quick enough. How long will it take to have an oversight board? Should legislation be rescinded until a board is in place or amend it as it exists now?*
15. **Sen. Whipple**-*Growing pains with new legislation happens. Property associations and management companies should educate their members as to what the law says. Some changes may need to be made on the sticking points. Some other issues have been raised that may lead to longer discussions and some ancillary legislation. She is pleased that everyone is communicating and the Commission should work out as much as possible without proposing new legislation.*

### **III. Licensure of Management Companies**

- A. **Jay DeBoer**-Director of Department of Professional and Organizational Regulation (DPOR)
  1. Defer time to Pia Trigiani-Community Associations Institute.
  2. Conceptual summary has been distributed.
  3. Jack Rust and Pia Trigiani looked at legislative models along with Northern Virginia lawyers that represent community associations.
  4. Conception was to create a separate regulatory board.
  5. Board would take responsibility for property registration program.
    - a) Regulation of condo and time share sales.
    - b) Real estate board has been in charge until now.
    - c) Makes sense to keep all of these issues in the same place.
  6. Function of the common interest ownership fund-requires an annual registration from associations. Community Association liaison created through this, currently Cynthia Schrieir.
  7. Regulation of community management firms would include certification.
  8. Hand out on Firm Licensure.
- B. Summarized Comments on Licensure of Management Companies
  1. **Del. Suit**-*Concept would need to address the case of a real estate broker that sells property and acts as an association manager. Need to address the dual license so they aren't duplicating education through real estate.*

2. **Jay DeBoer**-Only providing technical assistance, cannot bind the agency with any proposal. May not be able to express any opinions.
  - a) History of how regulatory programs come into being and how they are implemented.
  - b) Board for Professional and Occupational Regulation-will conduct a study on need for regulation and the level of regulation.
  - c) DPOR is the home of the Real Estate Board.
  - d) They are made aware of the desire for oversight over community associations from a governmental entity.
  - e) The closest analogue is the Real Estate Board which has been discussed by Ms. Trigiani.
  - f) The Real Estate Board is currently meeting and they would probably have comments.
  - g) The default for a new regulatory board is 5 members by Code; common practice is to have citizen members.
  - h) All regulatory programs have to be self-funded in Virginia.
  - i) Cost per program has to be borne exclusively from those that are regulated.
  - j) Initial cost of licensure potentially very high.
  - k) Understanding the terms is important. Certification of individuals is a voluntary program, many professions are called certified but they are really licensed. If you can't do the activity without approval, it is a license.
  - l) Would need to address other things such as grandfathering current managers.
  - m) Many times the legislature has missed things which hurt new regulatory boards.
  - n) Those that are in favor of this want a full and as complete a set of guidelines as possible. Violations and remedies should be determined right away.
  - o) Personal recommendation that Commission not put the minimal amount in the Code, and dump the rest into the Virginia Administrative Code (VAC); VAC regulation is taking three years for non-fast track regulations.
  - p) However, the VAC permits agencies to repair things on an ongoing basis, unlike statutes which must wait for the General Assembly.
3. **Del. Suit**-*How would the commission get a handle on the cost? There is a fee for all the associations, \$25 and there is a firm license fee and quasi-certification licensure. Perhaps testing should not be required, instead require that managers be certified from one of the other bodies that exist. (see handout)*
4. **Mr. Kirby**- *The number of associations is less than 200, 65-70% are very small.*
5. **Mr. DeBoer**-*One regulatory board has 47 regulants. Personal opinion that it would be very difficult to have board online by July 1 as suggested by Ms. Trigiani.*
6. **Del. Suit**-*Would certification of managers include managers that work directly for the association, and not for a professional management company?*
7. **Ms. Trigiani**-*There is some debate, but it seems there would be an exemption for them.*
8. **Del. Suit**-*Personal preference is that anyone that has the title of manager must have certification. There are some large associations and some large ramifications from this.*
9. **Mr. Kirby**-*Many managers are employees of the association. Perhaps there should be a contract with an individual manager and the association, just like there is between the management company and association.*

10. **Sen. Whipple**-*Such a solution would allow the association to terminate an employee since they would have an employer-employee relationship. One story was that a manager was giving contracts to her husband for inflated prices. They should have some recourse to fire that person.*
11. **Del. Suit**-*The issue is someone like that would go to another association and the new association would call for a reference and no one would give one because they don't want to get sued for giving a bad reference.*

#### **IV. Public Comment**

- a) There is none.

Meeting adjourned at 11:29 am.